

MINUTES  
LAWTON CITY COUNCIL REGULAR MEETING  
DECEMBER 17, 2013 – 6:00 P.M.  
NEW CITY HALL  
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor  
Presiding

Also Present:  
Bryan Long, City Manager  
Frank V. Jensen, City Attorney  
Traci Hushbeck, City Clerk

Mayor Fitch called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Paul Craig, The Christian Center, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Bob Morford, Ward One  
Keith Jackson, Ward Two  
Rosemary Bellino-Hall, Ward Three  
Jay Burk, Ward Four  
Dwight Tanner, Jr., Ward Five  
Richard Zarle, Ward Six  
Stanley Haywood, Ward Seven  
Doug Wells, Ward Eight

ABSENT:

None.

AUDIENCE PARTICIPATION: None.

CONSENT AGENDA

Mayor Fitch stated item #9 needs to be considered separately and Wells requested item #6 be considered separately.

MOVED by Burk SECOND by Wells to approve the consent agenda with the exception of items #6 and #9. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

1. Consider approving the 2014 Notice of Meeting Schedule for Lawton City Council Meetings and Resolution 13-\_\_ rescheduling the regularly scheduled meeting in December 2014. Exhibits: 2014 Notice of Meeting Schedule for Lawton City Council; **Resolution No. 13-79.**
2. Consider accepting a gift donation from the Walton Family Foundation in the amount of \$10,000, to be divided equally between the Lawton Fire and Lawton Police Departments. Exhibits: None.

3. Consider approving the application and issuing a Revocable Communications Cable Permit to Unite Private Network, LLC. to install approximately two hundred and fifteen thousand feet (13,030 rods) of fiber optic cable within the city limits right of ways to serve Lawton Public Schools. Exhibits: Application and Location Map. Revocable Communications Cable Permit (On File in City Clerk's Office)
4. Consider accepting a permanent easement and a temporary easement from Roverland LLC for right of way needed for the South Wolf Creek Trunk Expansion #2 Project #13-3SSES, authorizing the Mayor and City Clerk to execute the documents and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
5. Consider accepting a permanent sewerline easement and a temporary sewerline easement from Ruth Merritt Sims and Dale E. Sims wife and husband for right of way needed for the Nine Mile Creek Sanitary Sewer Interceptor Project#2008-2, authorizing the Mayor and City Clerk to execute the documents and authorizing payment for the same. Exhibits: Location Map. Documents are on file in the City Clerk's office.
6. Consider acknowledging receipt of a Tier I permit from the Oklahoma Department of Environmental Quality for the construction of 450 linear feet of 12-inch PVC waterline and all appurtenances to serve Discount Tires located in Quanah Parker Commercial Addition in the SW/4 of Section 20, T2N, R12W, I.M., Comanche County, Oklahoma. Exhibits: Permit to Construct on file in the City Clerk's Office.

Wells questioned the physical address.

Richard Rogalski, Community Services Director, stated it is located at the southeast corner of 82<sup>nd</sup> Street and Quanah Parker.

Wells requested that physical addresses be included in the agenda item.

MOVED by Wells SECOND by Zarle to acknowledge receipt of a Tier I permit from the Oklahoma Department of Environmental Quality for the construction of 450 linear feet of 12-inch PVC waterline and all appurtenances to serve Discount Tires located in Quanah Parker Commercial Addition in the SW/4 of Section 20, T2N, R12W, I.M., Comanche County, Oklahoma. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

7. Consider extending contract (CL12-020) Laboratory Services for Toxic Pollutants to Accurate Labs of Stillwater, OK. Exhibits: Department recommendation, Contract Extension Form, Price Sheet, Abstract of Bids.
8. Consider extending contract (RFPCL12-019) Jail-Inmate Telephone System to Legacy Inmate Communications of Cypress, CA. Exhibits: Department Recommendation, Contract Extension Form, Price Bid Sheet.

9. Consider awarding (CL14-012) Poly and PVC Sewer Pipe to HD Supply Waterworks, LTD of Owasso, OK. Exhibits: Department recommendation, Abstract of Bids.

Jerry Ihler, Public Works Director, stated when looking at the abstract of bids, there are two items that they are bidding, item #1 is a poly type material and item #2 are several different sizes of PVC pipe. When they reviewed this bid item they did not realize that the contract could be split up so that they could award to the two lowest bidders. Staff would like to revise their recommendation and award item #1, Poly pipe to the low bidder, ISCO Industries, for \$5.34 per linear foot and award item #2, the PVC pipes to HD Supply Waterworks, LTD, which was the low bidder. This will save us an additional \$1,100.

MOVED by Burk SECOND by Wells to award (CL14-012) Poly to ISCO Industries of Louisville, KY and PVC Sewer Pipe to HD Supply Waterworks, LTD of Owasso, OK. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

10. Consider extending contract (CL13-021) 48” & 54” Closed Profile PS 46, PVC Pipe to HD Supply Waterworks, LTD of Owasso, OK. Exhibits: Department recommendation, Contract Extension Form, Price Sheet, Abstract of Bids.
11. Consider extending contract (CL13-019) Electro Fusion Polyethylene Fittings to HD Supply Waterworks, LTD of Owasso, OK. Exhibits: Department recommendation, Contract Extension Form, Price Sheet, Abstract of Bids.
12. Consider awarding (CL14-014) Crane Services to Dale Miller Enterprises of Lawton, OK. Exhibits: Department recommendation, Abstract of Bids.
13. Consider approving appointments to boards and commissions. Exhibits: None.
14. Consider approval of payroll for the periods of December 9 - 22, 2013.

NEW BUSINESS ITEMS:

15. Hold a public hearing and consider an ordinance changing the zoning from R-1 (Single-Family Dwelling District) to C-1 (Local Commercial District) zoning classification on property located at 1804 NW 67<sup>th</sup> Street, and amending the binding site plan approved as part of Ordinance No. 13-8 which rezoned a portion of this tract. Exhibits: Ordinance No. 13-\_\_\_, Site Plan, Location Map and Application.

Rogalski stated this request is for Lot 3, Block 1, Fire View Addition. In January 2013, a portion of this lot was rezoned to C-1 with a binding site plan for an indoor archery range and archery equipment sales. The new applicant, VNBN, LLC, wants to rezone the remainder of the lot as C-1 and has submitted a site plan to develop the entire lot as medical and professional offices. Therefore, this request is to change the zoning on the remainder of Lot 3 and to amend the site plan which was approved as part of Ordinance No. 13-8. In accordance with Section 18-1-1-

114.1 of the City Code, amendments to approved binding site plans must be processed in the same manner as a rezoning request. The zoning of the surrounding area is C-1 to the north and south; R-1 and Public Facilities District to the east; and C-4 Tourist Commercial District to the west. The land use of the surrounding area is First National Bank to the north; Bedrock Nursery (under construction) to the south; single-family residential and church to the east; and Laugh Out Loud Amusement Center, Jim Norton Toyota Car Lot, and Lawton Academy of Arts and Sciences to the west. The 2030 Land Use Plan designates this tract as Commercial. Notice of public hearing was mailed on November 21, 2013, to 22 owners of property within 300 feet of the requested area, and proper notice was published in *The Lawton Constitution* on November 24, 2013. The City Planning Commission held a public hearing on December 12<sup>th</sup> and did recommend the item be approved.

Wells stated that this is the one that the council rushed to approve a couple months ago so that an Archery business could move out there. He stated at the time he questioned why they were rushing and now they are back again.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Zarle SECOND by Wells to adopt **Ordinance 13-40**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-40

An ordinance changing the zoning classification from the existing classification of R-1 (Single-Family Dwelling District) to C-1 (Local Commercial District) zoning classification on the tract of land more particularly described in section one (1) hereof; approving the binding site plan attached as Exhibit A which will supersede the binding site plan previously approved as part of Ordinance No. 13-8; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

16. Hold a public hearing and consider an ordinance closing the 10-foot utility easement for an abandoned waterline located near NW 22<sup>nd</sup> Street between NW Smith Avenue and NW Hoover Avenue and between NW Taft Avenue and NW Lincoln Avenue and NW 20<sup>th</sup> Street and NW Sheridan Road. Exhibits: Location Map, Ordinance 13-\_\_.

Rogalski stated an application had been received to close the 10-foot utility easement within Lot 13, Block 2, Reynolds Addition, (2116 NW Bessie Street). In processing the request it was discovered that the easement was originally obtained for a 24-inch waterline which had been abandoned as part of the North High Zone Project. At the direction of the City Manager, the planning staff researched all of the easements for the abandoned waterline so that any that are longer needed could be properly closed and vacated. While the waterline had passed through several subdivisions and unplatted properties, our search of County records only found the easement to be shown on four record plats. Apparently, no other easement instruments were filed for the waterline. The ordinance closes the easements noted on the record plats of Gooch Acres, Parts 1 and 2, Reynolds Addition, and the Replat of Block 50, Lawton Heights Addition.

Notice of public hearing was mailed on November 15, 2013 to 127 property owners within 300 feet of the easements and to the utility companies, and proper notice was published in *The Lawton Constitution* on December 1, 2013.

Morford questioned how they got this through when the homes were built.

Rogalski stated the water line was there without an easement. It is just how things were done a long time ago. He stated staff is just trying to clean up the record and make it easier in the future.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Wells SECOND by Jackson to adopt **Ordinance 13-41**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Haywood, Wells, Zarle. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-41

An ordinance closing the 10-foot utility easement located in Gooch Acres, Parts 1 and 2, and Reynolds Addition, located near NW 22<sup>nd</sup> Street between NW Smith Avenue and NW Hoover Avenue, more particularly described in section one hereof, and the 10-foot waterline easement in the replat of block 50, Lawton Heights Addition, located between NW Taft Avenue and NW Lincoln Avenue and NW 20<sup>th</sup> Street and NW Sheridan Road, more particularly described in section two hereof.

17. Hold a public hearing and consider an ordinance changing the zoning from C-1 (Local Commercial District) to C-3 (Planned Community Shopping Center District) zoning classification on property located at 2803 NW 67<sup>th</sup> Street. Exhibits: Ordinance 13-\_\_\_, Location Map, Application.

Rogalski stated this request is for a 0.643-acre tract of land located on the south side of Rogers Lane, east of NW 67<sup>th</sup> Street. The tract is owned by the City of Lawton and under contract with Anthony Properties Realty, Inc. On August 15, 2013, the CPC approved a site plan for a movie theater for the C-1 tract. The developer desires to move the drainage channel along the west boundary of the C-1 tract and rezone approximately 0.64 acres as C-3, to be developed with the adjacent 17.93-acre C-3 tract. This modification will not impact the site plan approved for the movie theater. The zoning of the surrounding area is Fort Sill Military Reservation to the north, Professional Office District to the south, C-1 to the east and C-3 to the west. The land use of the surrounding area is Fort Sill Military Reservation to the north, and vacant to the south, east, and west. The CPC held a public hearing on this request at its December 12, 2013, meeting and did vote to approve.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Wells SECOND by Zarle to adopt **Ordinance 13-42**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-42

An ordinance changing the zoning classification from the existing classification of C-1 (Local Commercial District) to C-3 (Planned Community Shopping Center District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; authorizing changes to be made upon the official zoning map in accordance with this ordinance.

18. Hold a public hearing and consider an ordinance amending Section 18-2-1-212 of Chapter 18 of the Lawton City Code, 2005, by clarifying the authority of the Board of Adjustment to vary code requirements related to off-street parking and declaring an emergency. Exhibits: Ordinance 13-\_\_.

Rogalski stated recently a request was received to vary the surfacing requirements for a parking lot for a local church. Section 18-2-1-212 of the City Code sets out those variances which may be granted by the Board of Adjustment (BOA). Subparagraph 6 of paragraph B of that section currently states: “Variances related to off-street parking may not be granted which alter safety requirements such as a site triangle, parking and maneuvering in the public right-of-way, and the installation of barrier curbs separating the public right-of-way from private property.”

The City Planner had interpreted this section to allow variances related to off-street parking as long as they did not violate the list provisions. However, the City Attorney’s Office questioned whether this section only qualified subparagraphs 3, 4, and 5 of paragraph B in Section 18-2-1-212, each of which also relate to off-street parking. The City Attorney’s Office and the Planning Division have therefore worked together to draft an amendment to subparagraph 6 allowing the BOA to grant other variances related to off-street parking provided certain conditions are met.

The proposed ordinance will allow the BOA to vary code requirements related to off-street parking as long as the variance does not: allow parking and maneuvering on the public right-of-way; remove the requirement for the installation of barrier curbs separating the public right-of-way from private property; alter any of the requirements related to handicap accessible parking; violate the storm water drainage regulations found in Chapter 19A of the City Code; or have a negative impact on public safety in the opinion of the City Engineer.

Examples of variances that could be granted by the Board of Adjustment would include the setback and/or screening requirements of parking lots in residential areas and the surfacing requirements of parking lots.

The City Planning Commission held a public hearing on December 12, 2013 and voted to recommend approval of this ordinance. Notice of public hearing was published in *The Lawton Constitution* on November 26, 2013.

He stated that there is some concern that some of these items that would be allowed to be varied by the Board of Adjustment could become a problem for the city, but his personal feeling is that the BOA can rule on it and if it becomes a problem the City Council can direct staff to rewrite the code differently.

Burk stated he does not want to take away what the council worked so hard to get, which is not having gravel parking lots in the middle of somewhere and having an issue. He does not want to weaken the current ordinance. He does agree with someone else making some decisions, but he wants to make sure they don't weaken something they will regret later.

Rogalski stated to grant a variance the BOA has to answer affirmatively five questions that say that there is a unique situation that doesn't cause harm to the community and there is a hardship on the property owner or applicant. It is not something that is easy to get. He is confronted often with someone that has a unique situation that the code did not provide for. He stated the BOA provides for a public forum for this issue and a variance with the BOA requires a 300 foot notice and a ten day public hearing notice. He stated there have been several variances with regard to the sign code. He likes the idea that if the code says no, there is a body set aside that can adjudicate whether or not there is a special situation.

Burk questioned if they could still appeal to the council.

Rogalski stated no, they would have to go to court if they are turned down by the BOA. The council could direct staff to adjust the code if they see a problem.

Morford stated the council is not voting on the situation with the church, they are voting on the change in code.

Rogalski stated this code is being written to allow anyone who has this type of issue on this particular item on parking to apply for a variance.

Burk questioned what procedure they use now. How do people appeal now?

Rogalski stated there is no appeal now. The only appeal to the zoning code is the BOA and if the BOA is not allowed to rule on it, they cannot appeal to council. They can ask to change the code, which is what they are doing now. Without this change, they have no recourse.

Burk stated people are concerned that we are giving them carte blanche to say this is how we are going to do parking in the city of Lawton. He stated he guessed the council wasn't involved anyway. If someone had a problem before this, Rogalski had the final say with yes or no.

Rogalski stated it either meets code or it doesn't. It is not an interpretation issue. Code is inflexible without this ability to vary the code with the BOA. Right now the BOA has the authority to vary setbacks, the authority to allow reconstruction of a non-conforming structure and there are a number of things set out for them already in code. If something became a problem the code could always be changed to close that hole.

Burk stated that makes us a little more citizen friendly.

Bellino-Hall stated the way the code is written now there is no appeal. This will make it possible for citizens to appeal these types of issues.

Rogalski stated they are trying to make is clear that there is an appeal for parking. Without this there is no appeal, it has to be done according to code.

Bellino-Hall stated we are not changing the code, they are just allowing the BOA to hear the appeal.

Morford stated the BOA is there to handle these unusual circumstances and they should let them have control over it.

PUBLIC HEARING OPENED.

Keith Marple, 7608 NW Tunbridge, stated he is a member of Cameron Baptist Church. He stated they have a unique problem in that they do not have enough parking for the people who are coming to worship services. They have been using this parking lot for 20 years and they have always had plans to upgrade the lot. They have requested the BOA give them three years to bring the lot up to quality standards. They are currently trying to pay off the debt on their building. They have plans to build a very nice parking lot which will cost approximately \$400,000. They are requesting a three year variance so they can raise funds to finish this property and fully meet city code. They did not realize they were in violation of city code and once they received the letter from the City they immediately blocked off the lot and looked for a solution. He complimented city staff for their assistance.

PUBLIC HEARING CLOSED.

MOVED by Tanner SECOND by Haywood to adopt **Ordinance 13-43**, waive the reading of the ordinance, read the title only. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-43

An ordinance pertaining to zoning amending Section 18-2-1-212, Division 18-2-1, Article 18-2, Chapter 18, Lawton City Code, 2005, by clarifying the authority of the board of adjustment to vary code requirements related to off-street parking; providing for severability; and declaring an emergency.

19. Consider discussing the formation of a Council committee or scheduling a series of Council workshops for the purpose of evaluating methods to finance capital, equipment and other critical needs of the City, and take appropriate action and/or provide direction as deemed necessary. Exhibits: None.



Jackson stated there is currently a .50 cent sales tax in effect which expires on December 31, 2014. This is not a new tax, it is an existing sales tax which goes to good projects. He suggested the council begin to study the direction they want to go. He is asking for council direction to determine if they want a council committee or the entire council to meet in a workshop setting. He stated he would prefer the entire council be involved in this issue and it is important that they schedule council workshops to decide projects and who will receive some of these funds. He would like to start these workshops after the first of the year because it may take a month or month and a half to decide a direction. They may be ready for an election sometime in June or July.

Mayor Fitch stated he and Councilmember Jackson discussed this and he feels they do not need a committee, he feels they need to involve the entire council. He stated this item does not need any action and he will get with the City Manager and City Clerk to set up a series of council workshops to study this issue and how they are going to address it.

20. Consider an ordinance pertaining to boards and commissions amending Division 2-3-7, Article 2-3, Chapter 2, Lawton City Code, 2005, AND Sections 2-3-7-336, 2-3-7-337, 2-3-7-338, and 2-3-7-339, Division 2-3-7, Article 2-3, Chapter 2, Lawton City Code, by establishing the Lawton Access Board, providing for severability, and establishing an effective date. Exhibits: Ordinance 13-\_\_.

Jim Russell, Assistant City Manager, stated the City of Lawton is in the ongoing process of conducting self-evaluation and facility assessments in order to meet program accessibility within the City as required by Title II of the Americans with Disability Act (ADA). Staff is also developing an updated Transition Plan that will serve as a guide to alleviating barriers to access and enhancing ADA compliant pedestrian accessibility throughout the City. The Transition Plan will be a “living” document that is presented and approved by the Council annually. This will allow the City’s ADA coordinator to show what accomplishments have been made in the previous year and propose updates to the plan according to accessibility priorities in future years. In order to assist with the development and implementation of the Transition Plan, as well as make recommendations to the City Council regarding accessibility priorities within the plan, staff is proposing that a board consisting of the City’s ADA Coordinator and four citizens be established to assist the City in meeting its requirements under the ADA.

Mayor Fitch stated no council members may sit on this board. It will be comprised of citizens from the community. This ordinance will allow the board to be established tonight and staff will coordinate with members.

MOVED by Wells SECOND by Burk to adopt **Ordinance 13-44**, waive the reading of the ordinance, read the title only and establishing an effective date. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 13-44

An ordinance pertaining to boards and commissions amending Division 2-3-7, Article 2-3, Chapter 2, Lawton City Code, 2005, and Sections 2-3-7-336, 2-3-7-337, 2-3-7-338, and 2-3-7-

339, Division 2-3-7, Article 2-3, Chapter 2, Lawton City Code, by establishing the Lawton Access Board, providing for severability, and establishing an effective date.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Long stated it was an honor to attend the police academy graduation last Friday.

Mayor Fitch thanked the council and staff for all their efforts.

The Mayor and Council convened in executive session at 6:47 p.m. and reconvened in regular, open session at 7:36 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

21. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending case in the Western District of Oklahoma of Billy Ray Chandler vs. City of Lawton and Bryan P. Long, 13-CV-1082-HE, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #21. No action was taken.

22. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending tort claim of East 75<sup>th</sup> Water Association, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #22. No action was taken.

23. Pursuant to Section 307(B)(3), Title 25, Oklahoma Statutes, consider convening in executive session to discuss the proposed sale of approximately 50 ½ acres, collectively or by parcel, of City-owned real property in the vicinity of NW 67<sup>th</sup> Street and Rogers Lane, as authorized by Ordinance No. 11-07, and take appropriate action in open session. Exhibits: None.

Jensen read the title of item #23.

MOVED by Wells SECOND by Zarle to approve the first amendment to the purchase and sale of real property agreement at 67<sup>th</sup> and Rogers Lane wherein 1) a closing date on or before June 19, 2014 is established, 2) the amount of the acreage being sold is more accurately listed as 28 acres, more or less, based on a survey of the property and 3) rezoning of all non-theater property to C-3 is recognized as having occurred. AYE: Morford, Jackson, Bellino-Hall, Burk, Tanner, Zarle, Haywood, Wells. NAY: None. MOTION CARRIED.

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending investigation of matters involving the Lawton Police Department, and if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #24. No action was taken.

25. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the Employment Agreement of Frank V. Jensen as City Attorney, and in open session take action as necessary. Exhibits: None.

Mayor Fitch read the title of item #25. He stated the council is pleased with the work done by Mr. Jensen and his staff. No action was taken.

Wells reported that staff has secured the library grant from the state.

There being no further business to consider, the meeting adjourned at 7:39 p.m. upon motion, second and roll call vote.

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FRED L. FITCH, MAYOR

ATTEST:

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TRACI HUSHBECK, CITY CLERK